

Parris, Bruce

From: Parris, Bruce
Sent: Wednesday, February 22, 2012 9:56 AM
To: 'dave@gatewayhomes.biz'
Cc: Beverly, Trudy
Subject: RE: General Help for PRPs and Consultants

Dave,

Per our telephone conversation today, I'm providing the information below which I hope will describe our regulatory program and its processes as well as the Brownfields Program.

In addition to the Div of Waste Management's Underground Storage Tank Section, which handles the regulation of UST sites and any sites contaminated with petroleum, there are other Section's within the Division to handle CERCLA regulated wastes and Hazardous Wastes. The Division's Hazardous Waste Section handles wastes that meet the Federal/State definition of a Hazardous Waste. More information about the HWS can be obtained from their website at: <http://portal.ncdenr.org/web/wm/hw> For CERCLA regulated substances that do not meet the definition of a hazardous waste but are rather a hazardous substance the Division has the Superfund Section <http://portal.ncdenr.org/web/wm/sf>. The state's Division of Waste Management – Superfund Section is divided into four branches: The Site Evaluation and Removal Branch, which deals with USEPA related federal removal actions and national priorities site listings (NPL); the Federal Remediation Branch, which deals with regulation of former Federal facilities and USEPA related sites; the Special Remediation Branch, which has the Dry-cleaning Solvent Cleanup Act (DSCA) that is a voluntary remediation program for contaminated drycleaner sites, and; the Inactive Hazardous Sites Branch (IHSB), which is the regulatory program for unpermitted, non-petroleum, non-underground storage tank (UST) sites contaminated with CERCLA listed hazardous substances and exceedances of the state's 15A NCAC 2L groundwater quality standards (2L) which must be cleaned up under state authority. The primary regulatory authority for the IHSB is derived from the NC General Statute 130A-310 et. seq., also known as the North Carolina Inactive Hazardous Sites Response Act of 1987 (IHSA). Unlike the NC Superfund Section Programs which deal primarily with the USEPA and associated Federal regulations, the IHSB's regulations require that site remediation occur to applicable or relevant and appropriate requirements, in this case, the state's (2L) groundwater quality standards which are usually stricter than the USEPA remediation requirements.

The IHSB has two regulatory tracks for handling sites that fall under its jurisdiction.

1) Direct Oversight by IHSB staff: Sites which have been designated as high priority by the IHSB, for example those sites with direct health contact issues involving contaminated potable supply wells, are assigned to a very limited number of staff for direct oversight. The IHSB solicits a responsible party (RP) to submit a site assessment work plan. Once received, staff review the work plan and provide feedback comments and ultimately an approvable work plan is submitted by the RP's consultant. Once receiving approval for the assessment work plan, the assessment is conducted by the RP's consultant and a report is generated based on the findings and submitted to the assigned IHSB project manager. The assessment process occurs in at least two phases; investigation and characterization of the various source areas (Phase I) and horizontal/vertical delineation of the identified contamination in various media of the site (Phase II). Additional assessment phases may be required for large or complex sites. Each phase of assessment requires submittal of a work plan to, and review and approval by, the assigned IHSB project manager. When assessment of the site is completed and approved, the RP enters into an administrative agreement (AA) with the IHSB and the draft agreement is made available for public comment through public notice (required by the IHSA). Once the AA is finalized and signed, the RP can prepare a Remedial Action Plan (RAP) which can propose to clean a site up to unrestricted use or to restricted use with a Declaration of Perpetual Land Use Restrictions (DPLUR). The RAP must also be made available for public review and also requires public notice. A RAP for unrestricted use would require that contaminated soils be remediated to the IHSB's direct contact health based goals and meet protection of groundwater criteria; that contaminated stream sediments be remediated to a level which meets protection of groundwater criteria and does not cause exceedances of the state's surface water standards; and that groundwater contamination be remediated to the 2L standards. A RAP for

Restricted use with DPLURs would require that soils and sediments be remediated to the IHSB's direct contact health based goals or an alternately proposed/calculated direct contact goal and meet protection of groundwater criteria. For soils to meet "protection of groundwater criteria" a demonstration must be made that the contaminated soils which remain at the site after remediation efforts will not have the capability of leaching contaminants into groundwater at concentrations that would cause further exceedances of the 2L groundwater quality standards. There are different methods available for making this demonstration outlined in the IHSB's Guidelines along with more detailed information on the overall assessment and remediation processes. Here is a link to the Division of Waste Management – Superfund Section's – IHSB website where you can find a sidebar web link called "Guidance" to get to our guidance docs, soil remediation goal tables, etc. You can also access other sidebar items such as a the "Site Notification" form, and "Site Cleanup Questionnaire". <http://portal.ncdenr.org/web/wm/sf/ihs/home>. From the IHSB's website, you can also navigate to the other Superfund Section program websites.

2) Assessment and Remediation in the IHSB's Registered Environmental Consultant (REC) Program: Due to extreme limitations on resources within the IHSB, sites with cooperative RP's that have not been designated as a high priority to be overseen by IHSB staff can conduct remediation in the REC Program. The REC Program is a privatized remediation program. The requirements are the same for site investigations and remediation plans, however they are conducted under the direction and certification of an approved private consultant. An RP who agrees to move forward in the REC Program signs an AA up front to enter the program with their designated consultant to perform the required assessment and remediation. There are more detailed Guidelines available for the REC Program which can be accessed at: <http://portal.ncdenr.org/web/wm/sf/ihs/recprogram>. Random audits are conducted by IHSB staff in the REC Program to determine if investigations and remediation efforts are meeting the requirements of the rules. Deficiencies identified during audits can result in RECs being issued Notices of Violation with opportunities to correct the deficiencies, revocation of their certification to participate in the REC Program, or assessment of civil and/or criminal penalties.

The AA's in both the direct IHSB oversight program and the REC program are voluntary and non-binding, meaning that the RP can dissolve the agreement at any time. However, assessment and remediation of a regulated contaminated site is required under state laws. The IHSB can require that the work be performed under an Administrative Order, which is typically pursued in situations where there are known human health risks associated with a site and the RP is unwilling to move forward with assessment and remediation. Our program is considered "voluntary" in that the IHSB requires that the IHSB first give an RP the opportunity to conduct the required work voluntarily before pursuing an Administrative Order. If a responsible party wishes to conduct and obtain approval for investigation and remediation activities under the regulatory authority of the IHSB, it must be done under one of the two programs outlined above.

Some RP's have chosen to independently conduct assessment and remediation outside of the IHSB's voluntary programs. Any responsible party that believes they have successfully completed independent assessment and cleanup activities at a Site and desires to solicit the IHSB for a determination of "No Further Action" (NFA) required status must complete a "Certification of Attainment of Cleanup Levels and No Further Action Required" form and submit a check in the amount of \$500.00 to perform the review. This form and additional information can also be downloaded from the IHSB's website. The check must be made payable to the North Carolina Division of Waste Management and include a reference such as the Site name or identification number. The fee is for a review of the request and Site data and does not guarantee that a "No Further Action" required status will be granted to the Site if the IHSB's assessment and remediation goals have not been achieved. Sites which have conducted assessment and remediation actions outside the IHSB's voluntary programs have not had the benefit of either a qualified registered site manager in the REC Program or an IHSB project management staff person (if a priority site) and often find they have not met the assessment and remediation goals, thereby losing the \$ 500.00 review fee.

Another DWM program for redevelopment of contaminated properties is called the DWM's Brownfield's Program. It was developed for the beneficial reuse of contaminated properties by prospective developers. Prospective developers can negotiate a Brownfields agreement with the program that defines activities needed to make the site suitable for reuse, rather than cleaning up the site to regulatory standards (which responsible parties are required to do). More information about the Brownfields Program can be found on their website at: <http://portal.ncdenr.org/web/wm/bf>

Brownfield sites are contaminated properties which have entered an agreement with the DWM Brownfields program. These agreements allow a developer to limit their regulatory liability when they purchase contaminated properties for redevelopment. The agreement will require that site contamination be assessed and remediated to a level which is safe for the intended use of the property, but does not usually require a full remediation to state standards or require off-site remediation for contamination which has migrated beyond the property boundary. The original regulatory responsible party (if still available, i.e. not bankrupt or deceased) maintains regulatory responsibility for complete assessment and remediation to state standards under whichever program is regulating them.

I hope you find this information helpful.

Bruce

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The Superfund Section - IHSB's Specifications for Electronic Document Submittal can be found at:
http://portal.ncdenr.org/c/document_library/get_file?uuid=cb794534-e1a2-4c7a-b4c2-faf3c8d056d9&groupId=38361

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